

AO 241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

9:07-cv-802
NAM/GJD

United States District Court		District <u>Northern</u> U.S. DISTRICT COURT - N.D. of N.Y. Prisoner No. <u>DOC # 03-45981</u>	Case No.
Name <u>Trover Richins</u>		<div style="border: 1px solid black; padding: 5px; display: inline-block;"> AUG 06 2007 </div>	
Place of Confinement <u>Great Meadow Correctional Facility</u>			
Name of Petitioner (include name under which convicted)		Name of Respondent (authorized person having custody of petitioner)	
<u>Trover Richins</u>		<u>Lawrence K. Baerman, Clerk - Syracuse</u>	
V.			
<u>Darwin LaClair, Superintendent</u>			
The Attorney General of the State of: <u>Andrew M. Cuomo, Esquire</u>			

PETITION

1. Name and location of court which entered the judgment of conviction under attack County Court
County of Albany
2. Date of judgment of conviction 6th November 2003
3. Length of sentence 25 years - five (5) Post-Release Supervision
4. Nature of offense involved (all counts) 2-Counts, Reckless Endangerment 1st Degree; 2-Counts, Assault in the 1st Degree
5. What was your plea? (Check one)

(a) Not guilty ☒
 (b) Guilty ☐
 (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

N/A
6. If you pleaded not guilty, what kind of trial did you have? (Check one)

(a) Jury ☒
 (b) Judge only ☐
7. Did you testify at the trial?
Yes ☒ No ☐
8. Did you appeal from the judgment of conviction?
Yes ☒ No ☐

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9. If you did appeal, answer the following:

- (a) Name of court Appellate Division of the Supreme Court, 3rd Dept.
- (b) Result Affirmed
- (c) Date of result and citation, if known 18th August 2006 [29 AD3d 1170]
- (d) Grounds raised See Exhibit - "1" annexed hereto]

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

- (1) Name of court New York State Court of Appeals
- (2) Result Leave Application denied
- (3) Date of result and citation, if known 4th August 2006 [7 NY3d 817]
- (4) Grounds raised Same as Line#9(d)

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

- (1) Name of court Appellate Division, Third Department
- (2) Result Motion for Reargument - Denied
- (3) Date of result and citation, if known 12th July 2007
- (4) Grounds raised Unbalanced Jury Instruction - Respondent's witnesses as Interested Witnesses as a matter of law

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court To be submitted - not as yet filed
- (2) Nature of proceeding CPL §460.20 Motion - Leave to Appeal
- (3) Grounds raised Same as Line # (4), ante

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result N/A

(6) Date of result N/A

(b) As to any second petition, application or motion give the same information:

(1) Name of court None

(2) Name of proceeding N/A

(3) Grounds raised N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result N/A

(6) Date of result N/A

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐

(2) Second petition, etc. Yes ☒ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

N/A

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

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For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Violation of Due Process and Sixth Amendment

To a Fair Trial

Supporting FACTS (state *briefly* without citing cases or law): THE TRIAL COURT ERRED WHEN IT PER-
MITTED THE PROSECUTOR TO REMOVE A PROSPECTIVE FEMALE AFRICAN
AMERICAN JUROR IN VIOLATION OF THE RULE IN BATSON -vs- KENTUCKY,
AND THEREFORE IS ENTITLED TO A NEW TRIAL.

B. Ground two: Denial of Due Process to a fair Trial

Supporting FACTS (state *briefly* without citing cases or law): THE TRIAL COURT'S SANDOVAL RUL-
ING WAS ERROR BECAUSE ITS PREJUDICIAL EFFECT ALLOWED THE PROSECUTOR
TO PORTRAY APPELLANT AS A DRUG DEALER, AND OUTWEIGHED ANY PROBAT-
IVE VALUE IN A CASE THAT HAD NOTHING TO DO WITH DRUGS. FURTHERMORE,
THE PROSECUTOR'S ABUSE OF THE COURT'S SANDOVAL RULING AT TRIAL AND
HER SUMMATION WAS MISCONDUCT, AND DENIED APPELLANT HIS DUE PROCESS
TO A FAIR TRIAL.

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C. Ground three: Denial of Due Process - Evidence insufficient to sustain
The Conviction

Supporting FACTS (state *briefly* without citing cases or law): THE EVIDENCE LEADING TO APPELLANT'S
CONVICTION WAS LEGALLY INSUFFICIENT TO PROVE HIS GUILT BEYOND A
REASONABLE DOUBT, AND AGAINST THE WEIGHT OF THE CREDIBLE EVIDENCE.

D. Ground four: Denial of Sixth and Fourteenth Amendment rights to ef-
fectiveness assistance of trial Counsel

Supporting FACTS (state *briefly* without citing cases or law): APPELLANT RECEIVED CONSTITUTION-
ALLY DEFICIENT REPRESENTATION UNDER THE STANDARDS ENUMERATED IN
STRICKLAND -vs- WASHINGTON, AND UNDER APPLICABLE STATE CONSTITUT-
IONAL LAW

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: N/A

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
 Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing None


(b) At arraignment and plea Mathew Swedick, Esq; 61 Columbia Avenue,
Albany, New York 12207

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- (c) At trial Peter Lynch, Esq: 111 State Street, Albany, New York
12207
- (d) At sentencing Same as Line (c), ante
- (e) On appeal Ann C. Sullivan, Esq: 26-F Congress Plaza, Saratoga Springs,
New York 12866
- (f) In any post-conviction proceeding Pro se
- (g) On appeal from any adverse ruling in a post-conviction proceeding None

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?
Yes ☐ No ☒
17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
Yes ☐ No ☒
- (a) If so, give name and location of court which imposed sentence to be served in the future: _____
N/A
- (b) Give date and length of the above sentence: N/A
- (c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
Yes ☐ No ☒

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.


Signature of Attorney (if any)
s/Trover Richins - Movant

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 25th, 2007

7.25.07
Date


Signature of Petitioner
s/Trover Richins - Movant

EXHIBITS

“1”

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POINT I

THE TRIAL COURT ERRED WHEN IT PERMITTED THE PROSECUTOR TO REMOVE A PROSPECTIVE FEMALE AFRICAN-AMERICAN JUROR IN VIOLATION OF THE RULE IN <i>BASTON v KENTUCKY</i> , AND THEREFORE IS ENTITLED TO A NEW TRIAL.....	9
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THE TRIAL COURT'S <i>SANDOVAL</i> RULING WAS ERROR BECAUSE ITS PREJUDICIAL EFFECT ALLOWED THE PROSECUTOR TO PORTRAY APPELLANT AS A DRUG DEALER, AND OUTWEIGHED ANY PROBATIVE VALUE IN A CASE THAT HAD NOTHING TO DO WITH DRUGS. FUTHERMORE, THE PROSECUTOR'S ABUSE OF THE COURT'S <i>SANDOVAL</i> RULING AT TRIAL AND IN HER SUMMATION WAS MISCONDUCT, AND DENIED APPELLANT HIS DUE PROCESS RIGHT TO A FAIR TRIAL.....	17
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